Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
TIME WARNER CABLE,	)	MB Docket No. 06-151
A Division of	)	
TIME WARNER	)	
ENTERTAINMENT COMPANY, L.P.	)	
	)	
Emergency Petition for	)	
Declaratory Ruling and Enforcement Order	)	
For Violation of Section 76.1603 of the	)	
Commission's Rules, or in the Alternative	)	
For Immediate Injunctive Relief	)	

To: The Commission

NFL ENTERPRISES LLC'S OPPOSITION TO
TIME WARNER CABLE'S APPLICATION FOR STAY

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DATED: August 4, 2006

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I. INTRODUCTION AND SUMMARY

The Bureau's decision to enforce the consumer protection provisions in Section 76.1603 against Time Warner Cable ("Time Warner") by restoring the *status quo ante* vindicated the rights of Time Warner subscribers across the nation who were not given notice of a programming change that Congress and the Commission's rules demand. The Bureau (or the Commission, if it takes up the matter, which is not necessary) should reject Time Warner's Application because it ignores the plain elements of the rule, which Time Warner blatantly violated, and instead relies on collateral and irrelevant contract negotiations and constitutional issues which are inapposite.[1] Time Warner controlled its fate every step of the way and pursued a strategy of keeping

[1] *See Time Warner Cable, A Division of Time Warner Entertainment Company, L.P.*, Order, MB Docket No. 06-151, DA 06-1587 (rel. Aug. 3, 2006) ("Order").

consumers in the dark until the last possible minute. Time Warner cannot be allowed to paint itself (and the Commission) into a corner and then cry that there is no way out.

There is no dispute that Time Warner dropped the NFL Network ("NFLN") from its newly-acquired cable systems without the 30-day notice required by Section 76.1603. The Order appropriately determined that it was likely that, by doing so, Time Warner had violated Section 76.1603,[2] which requires cable operators to provide their customers with thirty days' notice of programming changes, including discontinuation of program channels. In order to prevent ongoing harm to Time Warner's subscribers across the country and to NFL, the Media Bureau took the necessary step of "order[ing] Time Warner, on a temporary basis, to reinstate carriage of the NFL Network on all of its newly acquired systems on previously applicable terms until we are able to resolve the NFL's Petition on the merits."[3] This decision was necessary to shield Time Warner subscribers from the harms caused by the rule violation, and also was necessary to protect NFL's interests during this critical time of year. The Order was appropriate and should stand.

II. THE MEDIA BUREAU'S DECISION TO GRANT INTERIM RELIEF WAS APPROPRIATE AND CONSISTENT WITH PRECEDENT.

A. Time Warner was at all times capable of giving the required notice to consumers but chose not to.

The Media Bureau found that Time Warner had likely violated Section 76.1603 in two respects: first, by failing to give notice of a change in programming services offered by a cable operator "must be given to subscribers a minimum of thirty

[2] 47 C.F.R. § 76.1603(b) and (c).

[3] *Order* at para. 1. NFL understands that Time Warner has begun complying with the Media Bureau's *Order*, and it believes that NFLN has either been reinstated or will soon be reinstated in all relevant markets.

(30) days in advance of such changes if the change is within the control of the cable operator."; and second, by breaching the requirement operators "give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change." "When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified." *Id.* Given the explicit obligations imposed by the rule, and the unambiguous nature of Time Warner's violations, the Order correctly found a likely violation of both Section 76.1603(b) and (c).

The sum total of Time Warner's filing is that it should be exempt from these basic notice obligations whenever its negotiating tactics fail to yield a last-minute deal. It asserts First Amendment arguments, subscriber confusion arguments, takings arguments, and nearly everything else for its position that compliance in this case was not possible and that the Commission cannot vindicate the consumer protection rights that Congress and the Commission impose. Time Warner urges that its decision to not give notice on or before July 1, 2006 was not within its control, because the outcome of the negotiations was uncertain. It then argues that its unilateral rejection of NFL's thirty-day offer of carriage was also somehow not within its control. Those preposterous assertions miss the point. Section 76.1603's purpose is to give *subscribers* protections from abrupt changes; the rule applies whether negotiations are easy or hard, settled in advance or go to -- or beyond -- the last minute. Time Warner's reading robs the rule of any protection: under its view, a cable operator could at any time avoid its obligation to notify consumers of its decision to discontinue carriage of any of hundreds of channels, simply by declaring negotiations at an end and deleting the channels. Under such circumstances, the cable operator would not have authorization to carry the channel and, under Time

Warner's construction, compliance with the rule would not be "within its control." The Media Bureau was right to conclude that this self-fulfilling prophecy cannot be the result contemplated by the rule. Order at para. 9.

Time Warner's focus on the disputes with NFL during negotiations for longer-term carriage arrangements is irrelevant. The NFL does not seek Commission review of Time Warner's conduct during these negotiations; it simply asks the Commission to enforce the basic and unambiguous notice obligation that Time Warner has to its consumers. Time Warner's disagreement with the NFL over the terms of a longer-term carriage agreement does not bear on this proceeding, except to the extent that Time Warner used its violation of Section 76.1603 in order to gain leverage during those negotiations. In any event, as described more fully in the attached Affidavit of David Proper, the NFL has done everything it could before August 1, and after issuance of the Order, to enable Time Warner to comply with the notice requirement.[4]

B. Section 76.1603(c) provides an additional basis for a rule violation.

Moreover, even if Time Warner were right that its compliance with Section 76.1603(b) is excused because compliance was outside of its control, the Order correctly and independently relies on Section 76.1603(c), since that requirement does *not* include an exemption for circumstances outside of Time Warner's control. The rule makes plain that the notice requirements in Section 76.1603(c) are "[i]n addition to the requirement of paragraph (b) of this section." Time Warner ignores this part of the Order, even though the Order correctly identifies Section 76.1603(c) as a separate notice requirement that Time Warner violated. Order at para. 3. Thus, regardless of the

[4] *See* Affidavit of David Proper, attached hereto at Exhibit A.

circumstances surrounding Time Warner's violation, it cannot escape liability by constructing circumstances that it claims would prevent it from carrying NFLN.

C. The Order satisfies the injunctive relief standard.

Time Warner concedes, as it must, that the only relevant considerations here are the factors that the Commission considers in determining whether to grant interim relief of this type: (1) the likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of preliminary relief; (3) the degree of injury to other parties if relief is granted; and (4) whether the preliminary relief will further the public interest.[5] The Commission has recognized that the public interest factor "necessarily becomes crucial" in cases involving "administration of regulatory statutes designed to promote the public interest."[6] Moreover, "a compelling demonstration that the public interest would be irreparably harmed lessens the level of certainty required of a moving party to show that it will prevail on the merits."[7] The Media Bureau properly weighed these factors and determined that limited interim relief was both appropriate and required under these circumstances in order to provide subscribers with the notice to which they are entitled. Order at paras. 7-9.

Contrary to Time Warner's characterization of subscribers' reaction as "minimal,"[8] almost 8,000 subscribers – by any measure, a significant number – complained or discontinued service in just the first 48 hours about NFLN was dropped.[9]

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[5] *See AT&T Corp.*, 13 FCC Rcd 14508, 14515-16 (1998).

[6] *Order* at para. 6 (citing *AT&T Corp., supra,* at 14516).

[7] *Id.*

[8] Petition for Recon. at 15.

[9] Petition for Recon, Exh. 1, at para. 18.

Importantly, because Time Warner apparently gave notice to subscribers on July 27, but did not acquire control of the relevant systems until August 1, the bulk of the complaints received would likely have gone to Adelphia or Comcast, not to Time Warner, and these complaints would not be included in Time Warner's already substantial statistics. Time Warner's 8,000 subscribers represent just a 48-hour snapshot of the consumer reaction to the decision to drop NFLN.

In addition, NFL logged 22,701 complaints originating from Time Warner Designated Market Areas ("DMAs").[10] Because anecdotal experience suggests callers encountered long hold times and disconnected calls, Time Warner likely has significantly understated the number of outraged viewers. These numbers, under any standard, establish that Time Warner's subscribers have suffered as a result of the lack of adequate notice that Congress and the Commission's rules require.

Time Warner dismisses out of hand the substantial and irreparable harms to the public and to NFL caused by its failure to comply with a basic rule. The balance of harms clearly supports the Bureau's decision to reinstate NFLN. The substantial complaints in the 48 hours following Time Warner's decision to drop NFLN reflect the public's interest in ensuring their voices are heard or alternatives are found.[11] Time Warner also hypothesizes that its customers would not have decided to switch to another MVPD in order to receive NFLN, if they had sufficient time to do so.[12] It is not Time Warner's role, however, to set consumer protection parameters. Section 76.1603(b) and (c) have set thirty days, not five days or zero days, as the appropriate amount of time to

[10] Proper Affidavit at para. 11.

[11] *See* Petition for Recon. at 15-16.

[12] *Id.*

allow consumers to respond to programming changes. Without the interim relief ordered by the Media Bureau, consumers would be forced to go without NFLN service or suffer unacceptable and unnecessary inconveniences to obtain alternative service on a rush basis. Time Warner is simply not entitled to exempt itself from rules protecting consumers when compliance becomes inconvenient or not consistent with its broader business or regulatory plans.

Time Warner also dismisses NFL's claim that "viewership patterns are . . . established" during the period that NFLN airs its valued "insider access" training camp and pre-season programming. In fact, as Time Warner well knows, programming preceding the regular season is critical to establishing routine viewership during the season itself. Football fans who watch NFLN coverage during training camps and pre-season games are highly likely to turn to NFLN during the regular season.[13] Absent the interim relief ordered by the Bureau, Time Warner's decision to discontinue carriage of NFLN would likely have cost the NFL many of those viewers.[14]

Time Warner claims inconvenience because of subscriber confusion, but that does not stand scrutiny since Time Warner has indicated that NFLN already has been reinstated.[15] Moreover, any limited inconvenience claimed by Time Warner to comply with the Order is inconsequential when compared with the systemic nature of its violation and the magnitude of the harm it has caused. Time Warner complains that it will be forced to pay for programming it does not want, but, as the Bureau observed, "it does not

[13] Proper Affidavit at para. 3.

[14] Proper Affidavit at paras. 3-5.

[15] Proper Affidavit at para. 12.

appear that Time Warner objects in principle to carrying the NFL Network."[16] To satisfy Time Warner's concerns, however, NFL is willing to permit Time Warner to pay the license fees it is owed over the next thirty days into an escrow account. If the Commission or a court of competent jurisdiction finds that Time Warner did not violate Section 76.1603, NFL will permit these funds to be refunded to Time Warner from the escrow account.

Time Warner's backup defense that the Media Bureau's Order caused it to bump other cable programs is also specious. First, as stated, Time Warner could have given notice any time up to July 1, 2006; instead, it painted itself into a corner and now complains there is no way out. Second, the programming at issue was carried on the system for less than 48 hours, and it is unlikely that the interests of Time Warner or its subscribers would be appreciably harmed by an order to return to the *status quo ante*, and to move replacement programming that Time Warner had carried for a matter of hours. In any case, NFL notified Time Warner well before August 1 of its obligation to provide customers with notice of any decision to drop NFLN. By ignoring that obligation and replacing NFLN with other content in some markets, Time Warner bore the risk that the Commission would quickly issue an order requiring it to comply with its obligations under the Rules.

D. The Order properly concluded that NFL would likely prevail on the merits.

Finally, as the Bureau held, NFL is highly likely to prevail on the merits. Order at 9. As NFL explained in its Petition, these critical facts are clear: (1) Time Warner discontinued carriage of NFLN on August 1, 2006; and (2) Time Warner did not

[16] Order at para. 8.

notify its subscribers thirty days in advance of its intention to drop NFLN from the channel lineups of the newly acquired systems.[17] Moreover, Time Warner had the ability to carry NFLN for the thirty-day notice period, but it refused to do so. That adds up to a violation of Sections 76.1603(b) and 76.1603(c). Time Warner's specious argument that, when it affirmatively decided to reject NFL's thirty-day offer of carriage on the terms previously applicable to these systems, it put the ability to comply with the rule outside of its control, does not alter the conclusion that it violated both of those requirements. The interim relief was necessary to limit the damage that Time Warner was causing.

The Media Bureau properly balanced the equities in determining whether to grant interim relief. The relief it adopted was appropriate and measured. Any decision by the Commission to stay its effect would impose further harms on NFL and on consumers, and would erase the FCC's protection of consumer interests.

III. THE MEDIA BUREAU'S INTERIM RELIEF WAS FULLY CONSISTENT WITH THE CONSTITUTION AND WITH THE COMMISSION'S STATUTORY AUTHORITY.

Time Warner's resort to claims that the Commission is barred by statute or by the Constitution from enforcing its rules is unpersuasive. Time Warner's noncompliance with clear notice requirements necessitated injunctive relief. Time Warner's willful actions caused it the harm that it attributes instead to the Commission's purportedly unconstitutional Order.

There is no content regulation here to implicate the First Amendment. The Commission's rule simply says a cable operator has to give notice on changes in programming. The rule does not say what you must carry or must not carry. It addresses

[17] Emergency Petition at 13.

the conduct of the operator, and says that notice must issue when programming decisions have been made. First Amendment scrutiny plainly does not apply to governmental regulation of conduct.[18]

The Bureau's grant of interim relief enforces that conduct requirement in the only manner that is meaningful to the affected subscribers and NFL, by restoring the dropped channel so the notice could be supplied in a meaningful manner. It is folly to suggest, as Time Warner apparently does, that notice either should not be given at all (or one could suppose, be given only after the channel is gone from the system).

As NFL explained in its Petition,[19] Time Warner placed newspaper advertisements on July 27 announcing that NFLN "may" be dropped from its newly acquired systems on August 1. If Time Warner had simply placed that advertisement on June 30, it could have provided the notice to which its customers are entitled. In fact, it could have placed the announcement at any time during the pendency of its 13-month long transfer application. For whatever reason, Time Warner chose not to perform the conduct that the rule requires.[20]

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[18] As the Supreme Court stated in *Clark v. CCNV*, "it is the obligation of the person desiring to engage in assertedly expressive conduct to demonstrate that the First Amendment even applies," because clearly not all conduct is expressive and hence worthy of First Amendment protection. "[O]ne seeking relief bears the burden of demonstrating that he is entitled to it." 468 U.S. 288, 293 n.5 (1984). Time Warner has not met that burden.

[19] See Emergency Petition at n.2 and Attachment 1.

[20] Time Warner's repetitive recitation of the number of networks it had to negotiate with and the uncertainty of when exactly the Commission would approve its transfer application to acquire additional systems is totally beside the point. If the transaction made it too burdensome to comply with the Commission's consumer protection rules, then it should not have engaged in the transaction.

Time Warner knew that it had to give subscribers notice in advance of the last thirty days of its carriage of NFLN. The fact that Time Warner chose to delay notice, making the last thirty days occur after August 1, does not change Section 76.1603 from a notice obligation into a carriage obligation. If Time Warner had been concerned about whether it would carry NFLN after August 1, or if it affirmatively did not want to carry NFLN, it could have avoided this situation entirely by providing its subscribers with advance notice, ensuring that the thirty days ran before it acquired control of the systems and dropped NFLN. Time Warner chose not to do this.

Under Section 4(i) of the Communications Act of 1934,[21] the Commission has broad power to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [Chapter 5 of Title 47 of the U.S. Code], as may be necessary in the execution of its functions,"[22] including by compelling licensees to comply with its rules. The United States Supreme Court has broadly construed that power, concluding that Section 4(i) authorizes the Commission to adopt interim injunctive relief necessary to prevent harm to the public interest, during the pendency of more permanent proceedings authorized by the Act.[23] And one of the "functions" that the Commission is directed by Congress to execute is the establishment and enforcement of the cable customer service rules under Section 623 of the Communications Act of 1934, which function Time Warner does not allege is a violation of the Constitution.[24]

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[21] 47 U.S.C. § 154(i).

[22] 47 U.S.C. § 154.

[23] *U.S. v. Southwestern Cable Co.*, 392 U.S. 157, 180-81 (1968) (upholding under Section 4(i) Commission's order prohibiting a service provider from further expanding its network, in order to protect the public interest pending further proceedings).

[24] 47 U.S.C. § 534.

Having failed to provide notice in a timely manner, Time Warner now seeks to cast the Media Bureau's Order as a violation of the First Amendment.[25] But as stated above, there is no content regulation in the notice requirement. Thus, its main complaint goes to the underlying rule (and statute) more than the Bureau's Order. To the extent that it is arguing that the rule is not unconstitutional, but the Bureau's Order offends the First Amendment, that logic would lead to the conclusion that Congress has created, and the Commission has implemented, a right for consumers but no remedy. The Media Bureau quite properly has rejected such an outcome, as it would be absurd.[26]

Indeed, both Section 76.1603 and the Media Bureau's Order are narrowly tailored efforts to further the government's goal of "ensur[ing] that cable operators nationwide provide satisfactory service to their customers."[27] Congress and the FCC, in adopting Section 76.1603, gave cable operators broad discretion over what cable networks they would carry. It only imposed that operators communicate with their customers, in order that customers would be able to know what they are paying for. Section 76.1603 was enacted long before Time Warner contemplated acquiring control of these cable systems, and Time Warner was fully aware that a thirty-day notice obligation would apply to every decision to discontinue programming on every system it acquired. Time Warner's failure to adhere to subscriber notice requirements does not turn Section

[25] Time Warner intimates that the Order may have violated the Fifth Amendment, but Time Warner wisely refrains from pursuing that argument in its papers. NFL therefore presumes that Time Warner's Fifth Amendment argument is abandoned, and does not address it here.

[26] See, e.g., *American Mail Line Ltd. v. Gulick*, 411 F.2d 696, 701-702 (D.C. Cir. 1969) (rejecting interpretation whereby it would appear that Congress created a right without a remedy); *Crum v. Comm'r of Internal Revenue*, 635 F.2d 895, 900 (D.C. Cir. 1980) (rejecting procedure that would establish a right without a remedy).

[27] Emergency Petition at 10.

76.1603, or the Bureau's order requiring compliance with that rule, into any attempt by the FCC to create "forced speech."[28]

Time Warner has violated the thirty-day notice provisions of Section 76.1603, and it cannot save itself from compliance by mischaracterizing the facts or by raising inapposite constitutional questions. The Media Bureau properly, and with full authority, entered an interim order requiring Time Warner to comply with Section 76.1603. That Order was appropriate and should not be stayed or reconsidered.

IV. CONCLUSION

For the reasons stated herein, the Commission should uphold the Media Bureau's interim relief Order, which was adopted to prevent continued harm to consumers and to restore the *status quo ante* until it is possible to rule on the merits of NFL's Emergency Petition.

[28] With regard to Time Warner's argument that it should be excused from complying with its notice obligations as to the newly acquired systems simply because it did not choose to carry NFLN on the systems it already owned, *see* Petition for Recon. at 14, the Commission must realize that Time Warner voluntarily entered into agreements to acquire the relevant cable systems. It knew when it signed those agreements that NFLN was carried on the systems, and it knew that, if it ultimately decided to discontinue carriage of NFLN, a customer notice obligation would apply. Because Time Warner clearly could have given the notice far in advance of August 1, there is nothing remarkable – and, in particular, no First Amendment concern – in requiring Time Warner to give thirty days' notice before discontinuing carriage.

Respectfully submitted,

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Its Counsel

DATED: August 4, 2006

Exhibit A

DECLARATION OF DAVID PROPER

I, David Proper, hereby declare:

1. I am Senior Counsel for NFL Enterprises LLC (the "NFL"), operator of the 24-hour cable channel, NFL Network ("NFLN"). As in-house counsel for NFLN, my responsibilities include negotiating and drafting distribution and carriage arrangements for the service.

2. NFLN was launched in 2003 as a cable and satellite channel offering a schedule of popular and community-oriented sports programming to consumers throughout the country. This year, NFLN will televise more than 90 NFL games, including 54 preseason games in August, eight regular-season primetime games in late November and December, plus all 31 NFL Europe league contests. The popularity of NFLN among consumers is unprecedented: in the first two years of the network's existence, NFLN surpassed subscribership levels that the other major sports networks took five years or longer to achieve. NFLN is also a leading provider of video-on-demand ("VOD") cable programming, and its exclusive VOD game highlights programs have quickly risen to be among cable's most popular VOD offerings.

3. Cable networks, including NFLN, commonly have periods during their annual programming schedule that are of particular importance with respect to acquisition of viewers and establishment of viewing patterns. For networks focused on NFL football content, these critical periods include the NFL draft, training camps, the football pre-season, regular season and playoff games. During these periods, football fans identify the media outlets that they will rely on for coverage of important football

news and events, and many fans establish a primary media outlet that is their first choice for this information during the coming season.

4. This year, at 12:01 a.m. on August 11, NFLN will telecast its first pre-season football game of 2006, between the Cleveland Browns and the Philadelphia Eagles. The first pre-season game is an important event for football fans as it is their first time seeing their teams play competitively in at least six months. Such game broadcasts are considered "appointment viewing" and generate substantial interest among the viewing public.

5. During this period, NFLN viewership has historically been at its highest. NFLN builds on this high level of viewership to establish a relationship with its fans. This year, the month of August is particularly important to NFLN because it will include substantial communication with fans of NFLN's new fall schedule to include its new highlight program entitled NFL Gameday, NFL Replay (re-airs of the four best games of the previous weekend) and the late-November and December Thursday-Saturday regular season game telecasts.

6. Since December 8, 2004, cable systems operated by Adelphia Communications ("Adelphia") have been authorized to carry NFLN. The NFL has had a carriage agreement for NFLN with Comcast Corporation ("Comcast") since August 2004. Subscribers to the cable systems previously owned by these companies have therefore become accustomed to receiving NFLN, and they frequently turn to NFLN for its 24-hour football programming.

7. On July 27, 2006, just days after it acquired control of certain cable systems from Adelphia and Comcast, Fred Dressler, Executive Vice President for

Programming of Time Warner Cable, informed the NFL of Time Warner's intention to discontinue carriage of NFLN on all of the newly acquired systems. On this same day, Time Warner ran newspaper advertisements in at least some of its markets, advising consumers that NFLN "may not be available" after August 1. In markets where this newspaper advertisement was placed, Time Warner therefore gave consumers only five days' notice of the decision to drop NFLN.

8. Mr. Dressler had, in the week prior to July 27, informed the NFL that Time Warner was considering discontinuing carriage of NFLN upon the closing of the Adelphia transaction if the NFL did not agree to its terms of permanent or temporary carriage. The NFL advised Mr. Dressler that Time Warner was obligated under the FCC's Rules to provide its customers with thirty days' notice before dropping any programming channel.

9. In order to facilitate this notice, the NFL related to Mr. Dressler its offer to permit Time Warner to continue carrying NFLN on all of the newly acquired systems at the same level of penetration for thirty days, on the terms that were applicable to their carriage by Adelphia and Comcast. Time Warner rejected this offer.

10. After the NFL learned in late July that Time Warner would discontinue carriage of NFLN on the newly acquired systems without providing the required notice, the NFL began informing its fans of this development in order to provide them with as much notice as possible. Through its toll-free hotline, 866-NFL-NETWORK, NFL also permitted its viewers to be connected with their local cable operator to express their views about NFLN carriage.

11. Between July 31, 2006 and August 3, 2006, NFL logged 22,701 complaints originating from Time Warner Designated Market Areas ("DMAs") including 17,205 from the Buffalo, Cleveland, Dallas-Fort Worth and Los Angeles DMAs.

12. After the Media Bureau issued its Order on August 3, 2006, requiring Time Warner to reinstate carriage of NFLN, the NFL received a telephone call from Mr. Dressler. Mr. Dressler informed the NFL that Time Warner planned to comply with the Media Bureau's Order, and he requested copies of the NFL's carriage agreements with Adelphia and Comcast.

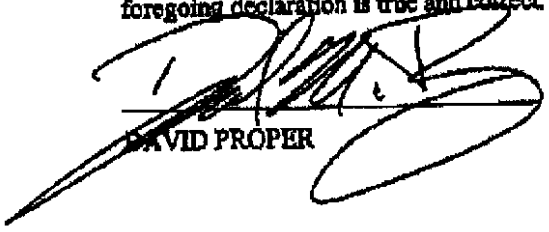
13. The carriage agreements with Adelphia and Comcast are subject to confidentiality provisions prohibiting the NFL from disclosing their terms, except as necessary to comply with legal obligations. Mr. Dressler responded that he hoped that the NFL would similarly honor confidentiality provisions in any agreements that Time Warner and the NFL might enter into.

14. In consultation with outside counsel, I determined, however, that the NFL could provide to Time Warner the substance of the terms that were necessary to comply with the Media Bureau's Order. On August 3, I provided this information to Mr. Dressler, and have asked Mr. Dressler to advise me if Time Warner requires additional specific information.

15. The NFL's negotiations with Time Warner for carriage of NFLN on all Time Warner systems have been longstanding. On May 31, 2006, NFL representatives met with Mr. Dressler to discuss a carriage agreement across all its systems. During this meeting, Mr. Dressler raised the prospect of the closing of the Adelphia transaction and asked if the NFL would consider allowing Time Warner to

carry NFLN in the newly-acquired systems for a period of time in order to avoid consumer disruption while the parties continued to negotiate for a broader carriage arrangement. The NFL representatives advised Mr. Dressler that the NFL would be willing to discuss such an arrangement and that he should forward a proposal for such limited carriage. Despite repeated requests, Time Warner did not provide this proposal until July 19, 2006.

I declare under penalty of perjury under the laws of the United States of America that the foregoing declaration is true and correct. Executed on August 4, 2006.



DAVID PROPER

CERTIFICATE OF SERVICE

I, Ami Pathak, hereby certify that on this Fourth day of August, 2006, I caused a copy of the foregoing Emergency Petition for Declaratory Ruling and Enforcement Order, Or, In The Alternative, For Immediate Injunctive Relief to be served by first-class mail, postage prepaid, upon:

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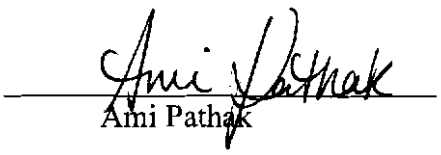

Ami Pathak